

Assembly Bill No. 2494

Passed the Assembly August 26, 2014

Chief Clerk of the Assembly

Passed the Senate August 25, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 128.5 of the Code of Civil Procedure, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2494, Cooley. Courts: frivolous actions or proceedings.

Existing law authorizes a trial court to order a party, the party's attorney, or both to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. In addition to the reasonable expenses award, existing law authorizes the court to assess punitive damages against the plaintiff on a determination that the plaintiff's action was maintained by a person convicted of a felony against the person's victim for injuries arising from the acts for which the person was convicted, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

Existing law also requires every pleading, petition, written notice of motion, or other similar paper to be signed by the attorney of record or an unrepresented party, as applicable, thereby certifying to the best of the person's knowledge, information, and belief that, among other things, the paper is not being presented primarily for an improper purpose, as specified, and that the claims, defenses, and legal and factual contentions are warranted, as specified. Existing law authorizes a trial court to impose sanctions upon an attorney, law firm, or party that violates these provisions in a complaint, petition, or other paper filed on or after January 1, 1995.

This bill would delete the December 31, 1994, date limitation on a trial court's authorization to award reasonable expenses incurred as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, thus making both of the provisions described above applicable commencing January 1, 2015. The bill would include in the definition of "actions or tactics" the filing and serving of an answer or other responsive pleading, and would exclude from that definition disclosures and discovery requests, responses, objections, and motions. The bill

would require a party filing a motion pursuant to these provisions to promptly transmit to the California Research Bureau a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any resulting order. The bill would also require the party to indicate whether a motion for sanctions was made for a violation of the certification provisions described above. The bill would require that the bureau maintain a public record of these documents for at least 3 years, except as specified. The bill would require certain standards, conditions, and procedures to apply to sanctions imposed pursuant to its provisions. The bill would repeal these provisions on January 1, 2018.

The bill would also require the California Research Bureau, on or before January 1, 2017, to submit a report to the Legislature examining the impact and effect of the changes made by the bill.

The people of the State of California do enact as follows:

SECTION 1. Section 128.5 of the Code of Civil Procedure is amended to read:

128.5. (a) A trial court may order a party, the party's attorney, or both to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers or, on the court's own motion, after notice and opportunity to be heard.

An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff on a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(f) Any sanctions imposed pursuant to this section shall be imposed consistently with the standards, conditions, and procedures set forth in subdivisions (c), (d), and (h) of Section 128.7.

(g) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

(h) (1) A party who files a motion pursuant to this section shall, promptly upon filing, transmit to the California Research Bureau of the California State Library, by email, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying the motion. The party shall also indicate whether a motion for sanctions was made pursuant to Section 128.7.

(2) The California Research Bureau shall maintain a public record of information transmitted pursuant to this section for at least three years, or until this section is repealed, whichever occurs first, and may store the information on microfilm or other appropriate electronic media.

(i) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 2. Section 128.5 is added to the Code of Civil Procedure, to read:

128.5. (a) A trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees,

incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) “Actions or tactics” include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint only if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. The mere filing of a complaint without service thereof on an opposing party does not constitute “actions or tactics” for purposes of this section.

(2) “Frivolous” means totally and completely without merit or for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party’s moving or responding papers, or the court’s own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff’s action was an action maintained by a person convicted of a felony against the person’s victim, or the victim’s heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

(f) This section shall become operative on January 1, 2018.

SEC. 3. On or before January 1, 2017, the California Research Bureau of the California State Library shall submit a report to the Legislature, in accordance with the requirements of Section 9795 of the Government Code, examining the impact and effect of the changes made by the act adding this section, including the number of motions made pursuant to Sections 128.5 and 128.7 of the Code of Civil Procedure, the number of motions made pursuant to those

sections resulting in an award of sanctions, the nature and amount of any sanctions awarded pursuant to those sections, and whether the changes made to Section 128.5 of the Code of Civil Procedure has had a demonstrable effect on reducing the frequency and severity of bad-faith actions or tactics that would not be subject to sanction under Section 128.7 of the Code of Civil Procedure.

Approved _____, 2014

Governor